n.10 June 2026

Legance

The focus of this issue:

Special Feature: Obligations Arising from Urban Planning Agreements

We'll also cover:

Data centers // Tacit consent and building permits // Lawfulness of legalized building surfaces

INDEX

INDEX

EDITORIAL *Giuseppe Abbruzzese*

Dear readers,

This publication has a new name. Re-views is now RE-xtra News. This is not merely a rebranding: the new name reflects our affiliation with RE-xtra, Legance's most comprehensive training programme dedicated to the real estate sector.

July will mark the conclusion of the programme's first executive course, an advanced and interactive pathway designed for selected executives in the industry.

Held from January to July 2026, with each monthly session taking place in Milan and Rome, the course combined practical case studies, market trends and innovative tools, always alongside Legance's professionals.

The feedback has been extremely positive, and we are already working on a second format designed for younger practitioners.

Another change: the publication will now be issued quarterly.

RE-xtra News is not a newsletter. We do not chase daily updates. Every three months, we select the developments that truly matter and present them within a coherent framework — useful for those who, in their day-to-day work, simply do not have the time to read the dozens of update emails that arrive each week from legal service providers.

In this issue, you will find a special feature on the obligations arising from urban planning agreements, including the Consiglio di Stato's recent clarification on the public-law nature of the obligations to acquire urbanisation works; an in-depth analysis of the Piano Casa Decree and the Enabling Act for the new Building Code; the latest developments from Rome on the NTA amendment and from Milan on the new guidelines on public use easements; an overview of the regulatory framework governing data centres following Law 49/2026 and the new Lombardy Regional Law; and updates on the lawful status of regularised properties, liberalisation of change of use, tacit consent, road setbacks, contingent and urgent orders, cultural pre-emption, self-revocation of SCIA, and construction of smaller volumes than those authorised.

Finally, an environmental focus on permanent safety measures (MISP) and public works on sites subject to site-specific risk assessment.

We hope you enjoy the read.

SPECIAL FEATURE: OBLIGATIONS ARISING FROM URBAN PLANNING AGREEMENTS *edited by Valentina Brovedani*

Public-Law Obligations: The Consiglio di Stato's Recent Clarification

By judgment No. 1938/2026, the *Consiglio di Stato* clarified that the **Municipality has an obligation to acquire and manage the urbanisation works** carried out and tested in accordance with urban planning agreements.
Given the frequent delays by Municipalities in acquiring public works carried out by private parties under such planning agreements, the question had long arisen as to whether the Municipality was in fact under an obligation to acquire those works.

According to the *Consiglio di Stato*:

- financial obligations – such as the payment of urbanisation contributions and charges – are comparable to private-law obligations and are therefore subject to the ordinary ten-year limitation period;
- **public-law obligations**, by contrast – such as the transfer of planning-standard areas (so-called "*aree a standard*", i.e., areas to be set aside for public use), the construction of urbanisation works, and their subsequent acquisition and management by the Municipality – **constitute a direct extension of the Municipality's institutional duty (and therefore, obligation)** to plan, manage, maintain, and oversee public infrastructure. It follows that the **Municipality's right and duty to acquire the works and ensure their management cannot be waived** and, as we shall see, is not extinguished by the passage of time.

On the Action for Specific Performance Under Article 2932 of the Civil Code

What if, instead, the private party fails to fulfil the transfer obligations set out in the urban planning agreement?
A consistent line of case law has held that the Municipality may bring an action for specific performance (*Consiglio di Stato*, Nos. 10467/2025 and 4511/2025; TAR (Regional Administrative Court) Veneto, No. 785/2024; TAR Emilia-Romagna, No. 822/2022; TAR Sardinia, No. 80/2022; TAR Calabria, No. 168/2019), and most recently, TAR Marche (judgment No. 530/2026) reaffirmed this approach.

Accordingly, the Municipality may bring an action for specific performance under Article 2932 of the Civil Code to obtain a judgment producing the effect of transferring areas earmarked for gratuitous transfer.

On the Applicability of Limitation

Once the validity period of the urban planning agreement has expired, actions seeking fulfilment of the financial obligations provided for therein are subject to the ordinary ten-year limitation period under Article 2946 of the Civil Code (TAR Marche, No. 530/2026; TAR Lazio, No. 16207/2025; TAR Sicily, No. 122/2022).

Administrative case law, however, **excludes the application of the limitation period to public-law obligations connected with urban planning**, such as the transfer of planning-standard areas or the construction and transfer of infrastructure works.

This is because:

a. fulfilment of these obligations is a precondition for the issue of the building permit; in other words, without the transfer of planning-standard areas and urbanisation works, the private party cannot obtain the permit required for the construction of private works; and
b. the application of private-law principles and instruments - such as the statute of limitations - to urban planning agreements (which are substitute agreements under Article 11 of Law No. 241/1990) is permitted only insofar as they are compatible with the planning powers inherent in such agreements (*Consiglio di Stato*, Nos. 10467/2025, 4511/2025, and 6717/2021; TAR Campania, No. 3659/2022; TAR Sicily, No. 742/2022). The Municipality's planning power cannot be constrained by limitation periods relating to obligations to construct and transfer works of public interest.

On the Propter Rem Nature of the Obligations

The obligations arising from urban planning agreements are propter rem obligations (also referred to as "*ambulatorie*", *i.e.*, obligations that 'run with the property'). They are transferred together with the relevant right in rem, with the result that they bind not only the original signatories to the agreement but also all subsequent successors in title.
Settled administrative case law confirms that the *propter rem* nature of the obligation entails that all parties involved in the planning process are bound to fulfil it: those who enter into the agreement, those who apply for the building permit, those who carry out the construction on the basis of a permit issued to their predecessor in title, and their successors in title (among the most recent rulings, see *Consiglio di Stato*, No. 6361/2025; TAR Puglia, No. 23/2026; TAR Lombardy, No. 385/2025).

ROBERTA PATRIZIA GIANNOTTE'S VIEWPOINT – THE PIANO CASA DECREE AND THE ENABLING ACT FOR A NEW CONSOLIDATED BUILDING ACT: IS THE ITALIAN CONSTRUCTION SECTOR SHEDDING ITS OLD SKIN?

The Obsolescence of the Current Legislative Framework

More than twenty years after it came into force, the Consolidated Building Act (*Testo Unico dell'Edilizia*, TUE) is showing clear signs of structural obsolescence that make its application, at times, a challenging exercise. The resulting uncertainty for investors is a significant deterrent. In the legislator's view, the remedy lies in a comprehensive reform.

Industry operators are calling for clear rules, as divergent interpretations by the courts and relevant authorities can jeopardise the outcome of a development project. Added to this are two further priorities: urban regeneration and the need to address the housing crisis.

In Brief: What Is Changing

- **Decree-Law No. 66 of 7 May 2026 (Piano Casa Decree) – available here** – introduces urgent measures for residential construction, including: (a) the establishment of a **Special National Programme aimed at expanding the supply of affordable housing**, through the refurbishment of public housing units that cannot currently be allocated due to maintenance issues, and the restoration of properties intended for social housing; (b) the appointment of a Special Commissioner to implement the programme; (c) the introduction of a guarantee fund for rent arrears through no fault of the tenant; and (d) the launch of integrated housing-infrastructure programmes, to be implemented primarily through private investment.
- **Draft Enabling Act "Building and Construction Code"** (**A.C. 2826** — Government bill tabled on 27 February 2026) – available here – grants the Government **delegated authority to adopt, within twelve months, one or more legislative decrees replacing the Consolidated Building Act with a new, comprehensive code**. The guiding principles cover several key areas: redefining categories of intervention; simplifying building permits; reorganising non-compliance issues and regularisation processes;

digitalising procedures and introducing a digital building logbook; and definitively closing any outstanding building amnesty applications.

In forthcoming issues of **RE-xtra News**, we will keep readers updated on the parliamentary process, the implementing decrees, and the first practical applications. The project is still under construction.

ROME – NTA AMENDMENT: THE MUNICIPAL EXECUTIVE COMMITTEE APPROVES THE PROPOSED COUNTER-OBSERVATIONS *edited by Roberta Patrizia Giannotte, Michele Balducci, and Vincenzo Acampora*

The Municipal Executive Committee approved the proposed counter-observations relating to the amendment to the Technical Implementation Rules (Norme Tecniche di Attuazione, NTA) of the Master Plan (Piano Regolatore Generale, PRG).

The resolution will now be forwarded to the Municipal Districts and the Urban Planning Commission for their respective opinions, ahead of final approval by the City Council. Once approved, the administrative process initiated at the end of 2024 will be concluded, and the new Technical Implementation Rules will become fully effective.

Operators should note that, until the amendment is approved, the safeguard measures will remain in force. Accordingly, where the building works covered by a requested – but not yet issued – building permit are found to be non-compliant with:

(a) the current NTA, or

(b) the NTA adopted through the amendment,

any decision on the permit application will be suspended.

Building permits already issued and/or finalised in contrast with the adopted NTA will not lapse only if works had commenced by the date of adoption of the amendment, and must be completed within three years from the start date.

MUNICIPALITY OF MILAN – NEW GUIDELINES ON PUBLIC USE EASEMENTS, MONETISATION, AND BUILDING DENSITY *edited by Matteo Bianchi*

Following our December 2025 overview (available here), we now examine the latest building-related resolutions issued by the Municipality of Milan.

By Resolution No. 609/2026 (available here), the Executive Committee (*Giunta*) of the Municipality of Milan approved the new "*Guidelines on Public Use Easements, Monetisation, and the Calculation of Building Density*", together with the template public-use easement deed.

The Guidelines introduce the following:

i. the establishment of a public use easement in favour of the Municipality, free of charge and on a perpetual basis, over areas transferred as territorial-standard requirements (*dotazione*) or as additional standard areas;
ii. compliance with environmental protection regulations governing the soil and subsoil of areas subject to a public use easement, since the easement serves a public interest only where the areas comply with applicable environmental legislation;
iii. the owner's commitment to carry out public- or general-interest works on areas subject to a public use easement, at the owner's care and expense;
iv. the owner's perpetual obligations to manage and carry out both ordinary and extraordinary maintenance of the encumbered areas and of any works constructed on them, at the owner's care and expense;
v. the provision of guarantees and penalties in the event of breach of the contractual obligations; and
vi. the rules governing the transfer of the above obligations.

Monetisation of the areas is permitted, as an alternative to acquisition and the establishment of a public use easement, for development projects that generate a requirement for territorial standard areas of 600 square metres or less, unless, following a duly reasoned assessment, a different determination is made for specific projects.

For demolition-and-reconstruction works within the Consolidated Urban Fabric (*Tessuto Urbano Consolidato*, TUC), for the purpose of calculating the impact of territorial-standard re-

quirements on the building-density index, the Net Developable Area (*Superficie Fondiaria*) is deemed to correspond to the Gross Developable Area (*Superficie Territoriale*) of the parcel concerned.

Execution of the public-use easement deed with the Municipality of Milan must occur before the issuance or formation of the building title, following prior approval of the deed template by means of an Administrative Determination issued by the relevant Department (*Determinazione Dirigenziale*).

In all cases, the identification of the essential elements of the areas to be made subject to a public use easement for individual and specific development projects – such as size, approximate location, and similar parameters – must be approved by resolution of the Municipal Executive Committee, including through periodic resolutions.

FROM THE REGIONS - DATA CENTRES: BETWEEN THE NATIONAL SINGLE AUTHORISATION AND REGIONAL PLANNING BOTTLENECKS *edited by Ristela Prendi*

*As you know, we have been following the evolution of the regulatory framework governing data centres and the authorisations required for their installation across the Italian territory for some time (see our article in the April 2026 issue). The regulatory landscape for the development of data centres in Italy has undergone a significant acceleration with the conversion into law of Decree-Law No. 21/2026 (the so-called "Bollette Decree", now **Law 49/2026**).*

The Single Authorisation: A Unified Procedure for Building and Environmental Matters
The most significant innovation introduced by Law 49/2026 is the Single Authorisation, issued by the authority responsible for the Integrated Environmental Authorisation (AIA) - namely the Ministry of the Environment and Energy Security or the Region. This measure consolidates all authorisations relating to building, urban-planning, environmental, and grid-connection aspects, as well as opinions on landscape protection and public health (Articles 1 and 5 of Law 49/2026).

To overcome the long-standing fragmentation of the authorisation process, the entire procedure is carried out through a single simplified decision-making inter-agency conference.

The "Halving" of EIA Timeframes
To provide greater certainty for investors, the new national legislation establishes that the unified procedure must be concluded within 10 months, extendable – in exceptional cases – by a further 3 months. At the same time, the timeframes for Environmental Impact Assessments (EIAs) have been formally halved (Article 4 of Law 49/2026). It should be noted, however, that this timeframe is indicative rather than peremptory, as no automatic substitute powers are currently provided in the event of non-compliance with the deadlines.

The Urban-Planning Issue: The Central Role of Local Authorities
Despite the procedural acceleration introduced at national level, urban-planning compatibility remains an essential preliminary step and is not automatically absorbed into the Single Authorisation.

It is precisely within this context that the Lombardy regulations (Regional Law No. 11 of 3 June 2026) operate,

maintaining their classification criteria unchanged.

Sustainability and the Energy Challenge
The success of future projects will increasingly depend on the ability to address the energy challenge, namely, the availability of power and the timeframes for grid connection. The legislation favours infrastructure models that integrate waste-heat recovery (district heating) and the use of renewable energy sources, requirements already central to the Lombardy Guidelines and now reaffirmed by the national legislature to ensure grid stability and support decarbonisation.

***

Lombardy Regional Law No. 11 of 3 June 2026
Lombardy is the first Region to have passed a law governing the siting of data centres, namely Regional Law No. 11 of 3 June 2026.

The Law in Brief
Below are the key provisions of the new Lombardy framework:

i. **Data centres requiring a connection capacity above 5 MW may be sited in areas zoned for industrial use, while those with a capacity below 5 MW are also compatible with areas zoned for tertiary and office use.** Data centres may also be sited in areas zoned for technology services, on a complementary or ancillary basis, provided they are integrated with district-heating systems. Different authorisation procedures apply depending on the required capacity.

ii. **Priority is given to brownfield sites,** contaminated, degraded, unused, or underutilised areas, and areas undergoing urban regeneration. Where data centres are established in non-priority areas that currently consume agricultural land, the **construction contribution increases** by 100%; this increase rises to 200% if the area falls within the boundaries of a regional park. Within one year of the Regional Law's entry into force, Municipalities must identify brownfield sites.

iii. For data centres that comply with the siting, energy and environmental priorities, the Regional Executive Committee may specify **cumulative incentive measures**, including: (a) reduced timeframes for the compatibility assessment procedure; (b) adoption of simplification protocols; (c) priority in the allocation of regional financial resources; (d) a 10%-30% reduction in the construction contribution (waste-management component); and (e) a 50% reduction in the area required for on-site parking, which may be increased up to 75%.

FURTHER DEVELOPMENTS ON THE (LAWFUL?) STATUS OF REGULARISED PROPERTIES *edited by Vincenzo Acampora*

The Consiglio di Stato's judgment No. 2848 of 9 April 2026 contributes to one of the most significant - and at the same time most uncertain - debates in contemporary planning law: the scope of building amnesty and the effects it produces on the legal regime of a property over time (we examined the evolution of this notion in a previous article in our April 2026 newsletter) – lastly, we also draw attention to Constitutional Court judgment No. 86/2026, which "upholds" Sardinia's regional regulations on regularised areas).

The ruling sits within a regulatory and case-law landscape in which **the notion of "*stato legittimo*" (lawful status) under Article 9-*bis*, paragraph 1-*bis*, of Presidential Decree No. 380/2001 and the enhancement of regularised properties are gradually evolving**.

The case originated from the Municipality's rejection of an application for a compliance assessment under Articles 36 and 37 of Presidential Decree No. 380/2001 and for landscape compatibility under Article 167 of Legislative Decree No. 42/2004. The application related to a series of works - closure of the front of a sheet-metal structure, construction of an air cavity, demolition of cold storage rooms, and creation of changing rooms and toilets - carried out within a property that had been authorised through a regularisation building permit issued in 2006.

According to the Municipality, these works could not be classified as "minor" works but amounted to new construction and were therefore not eligible for regularisation under the terms proposed.

The Regional Administrative Court (TAR) essentially endorsed this view, relying on a traditional line of interpretation according to which properties covered by building amnesty do not acquire full planning and building legitimacy. Under this approach, the building amnesty has a remedial effect limited solely to the original unauthorised work, thereby precluding subsequent works other than those of a purely maintenance nature.

It is precisely on this point that the *Consiglio di Stato* intervenes, establishing the principle of legal certainty as the basis for an evolving interpretation of the building amnesty regime.

In particular:

a. The issue of a regularisation building permit does more than prevent the demolition of the unauthorised work: it confers full planning legitimacy on the property, which must therefore be regarded as having been duly authorised from the outset.

   This approach has immediate practical implications. According to the Court, where a property is fully legitimate, there is no basis for limiting *a priori* the scope for its alteration. Subsequent works must therefore be assessed not in light of the property's previous irregularity, but solely against the applicable planning regulations.

b. The correct classification of the works is decisive. In the case at hand, the Municipality had classified the works as new construction. The Court, however, reached the opposite conclusion, noting that the works fell entirely within the already authorised volume and did not result in any increase in floor area or volume.

In this context, the works:

- fall squarely within the category of building renovation without any increase in urban load and with potential dual compliance under Articles 36 and 37 of Presidential Decree No. 380/2001; and
- comply with the planning designation of the area in which the property is located.

Overall, the ruling aligns with a trend that is becoming increasingly evident in both legislation and case law: strengthening the legal stability of properties and reducing the "grey areas" in which a property is formally legitimate yet cannot be fully utilised or converted.

LIBERALISATION OF CHANGE OF USE UNDER REVIEW BY THE CONSTITUTIONAL COURT *edited by Flavia Maria Veroux*

Change of use, following the amendments introduced into the Consolidated Building Act by the Salva Casa Decree, is currently the subject of a fluctuating interpretative debate in case law, to which the Constitutional Court has recently added its authoritative voice.

In brief, the *Salva Casa* Decree (Decree-Law No. 69/2024) liberalised so-called "vertical" changes of use (*i.e.*, changes between different functional categories: residential, tourist accommodation, productive and office, commercial) for individual units located in historic centres and completion areas (Zones A, B, and C under Ministerial Decree No. 1444/1968), making these changes always permitted, subject to compliance with sector-specific regulations and without prejudice to the possibility for municipalities to set specific conditions.

The reform also provides an exemption from the obligation to identify additional areas for general-interest services, from minimum mandatory parking requirements, and from primary urbanisation charges, while secondary urbanisation charges remain payable where required under regional legislation. As clarified in the ministerial Guidelines on the *Salva Casa* Decree, the principles of the reform apply directly and immediately throughout the national territory and prevail over any restrictive or prohibitive provisions contained in existing municipal planning instruments.

With its recent judgment No. 61/2026, the Constitutional Court has provided strong support for the liberalisation of change of use. In declaring the constitutional illegitimacy of Article 3, paragraphs 1 and 2, of Tuscany Regional Law No. 51/2025 – which amended Article 99 of Regional Law No. 65/2014 – the Court held that **regional legislation (and, consequently, municipal planning instruments) cannot**:

- **impose primary urbanisation charges for "vertical" changes of use;**
- **introduce limitations on change of use, but may only set specific, non-restrictive conditions.**

The Constitutional Court further clarified that the amended national legislation has direct and immediate effect, prevailing over local legislation: regional law cannot introduce any transitional period for municipalities to align their planning instruments with the Consolidated Building Act. The national provisions on the liberalisation of change of use therefore apply directly to both public administrations and private parties.

In commenting on the possibility for municipalities to set specific conditions for change of use, the Court clarified that "*the interposed national legislation cannot be regarded as unreasonable or as giving rise to unequal treatment, since* ***the legislator has both ensured its immediate applicability and allowed municipalities to intervene subsequently pro futuro, in accordance with general principles***."

This passage appears to confirm that national legislation currently prevails, and that municipalities may introduce specific conditions *pro futuro* (with effect for the future), thereby aligning with recent case law of the Regional Administrative Courts (for example, TAR Rome No. 2533/2026, which we analysed in our April 2026 issue).

THE OPINION *by Francesco Castoldi*

Judgment No. 61/2026 of the Constitutional Court offers an opportunity for a few reflections.

First, it should be noted that the liberalisation of change of use introduced by the *Salva Casa* Decree concerns individual units, and not entire buildings, which remain governed by local legislation and planning instruments. The Constitutional Court's judgment does not expressly clarify this point, which may generate some confusion if read in isolation.

Furthermore, despite the authoritative nature of the ruling, the current case-law landscape is not yet clear-cut. It is sufficient to note that, following the Constitutional Court's judgment, the Tuscany Regional Administrative Court (in judgment No. 916/2026) held that a prohibition on the establishment of a specific use contained in Florence's planning instrument (specifically, the prohibition on "temporary residences" in the historic centre) would not conflict with the Consolidated Building Act. The Court interpreted the municipal power to set "specific conditions" broadly, extending it to include specific prohibitions, without requiring prior alignment with the new national framework.

The judgment – which, notably, does not refer to Constitutional Court ruling No. 61/2026 – appears misaligned with the latter, which, as noted above, draws a clear distinction between admissible "conditions" and restrictive "limitations".

The very recent decision of the Florence Regional Administrative Court is therefore indicative of a case-law landscape that remains unsettled – one that the authoritative ruling of the Constitutional Court may, hopefully, help to progressively harmonise.

TACIT CONSENT AND BUILDING PERMITS: WHERE DO WE STAND *edited by Vincenzo Acampora*

In recent years, the mechanism of tacit consent in the building permit process has assumed a central role within the framework of administrative simplification measures.

This evolution has not, however, resulted in an automatic or unqualified application of the mechanism, which continues to be subject to strict judicial interpretation with the aim of preserving its function as a tool for procedural acceleration rather than transforming it into a means of liberalising building activity.

Case law has progressively identified the specific formal and substantive requirements that must be met for tacit consent to take effect.

The most recent rulings (*Consiglio di Stato*, Nos. 2179 of 16 March 2026, 1878 of 9 March 2026, 7768 of 25 September 2025, and 5746 of 8 July 2022) confirm that, **for tacit consent to form, the application must be *admissible***, irrespective of whether the administration has exercised its powers of review by the deadline for concluding the procedure.

In this regard, case law distinguishes between two types of '*inadmissible applications*':

- Structurally inadmissible applications, where the application lacks the essential elements required by Article 20, paragraph 1, of Presidential Decree No. 380/2001 (*i.e.*, proof of title or interest in the property, required design documents, necessary supporting documentation, and a declaration by a qualified designer certifying the project's compliance with approved and adopted planning instruments, current building regulations, and other sector-specific rules governing building activity – in particular, anti-seismic, safety, fire-prevention, health and hygiene, and energy-efficiency regulations); and
- Legally inadmissible applications, where the application does not conform to the abstract regulatory framework established by the legislator, because the applicant has misclassified the building works (for example, submitting a SCIA instead of the building permit required by law).

Outside these scenarios, the project's mere non-conformity with planning regulations or, more generally, its non-compliance with the law does not, in itself, prevent tacit consent from taking effect, without prejudice to the administration's power to adopt a subsequent self-revocation measure where the relevant conditions are met.

A second line of interpretation (*Consiglio di Stato*, Section IV, No. 7768 of 25 September 2024, TAR Lombardy, Milan, Section IV, No. 3433 of 27 October 2025, and TAR Calabria, Reggio Calabria, No. 202 of 27 February 2023) holds that **the application of the tacit consent mechanism presupposes a "*de facto* inaction on the part of the administration". Such inaction is excluded where the administration has carried out a preliminary review culminating in a notice of intended rejection** under Article 10-*bis* of Law No. 241/1990, provided that the objections raised are not merely specious and are capable of highlighting objectively problematic aspects.

A third line of interpretation (TAR Campania, Naples, Section VI, No. 1388 of 29 February 2024, and TAR Lombardy, Milan, Section IV, No. 518 of 27 February 2024) takes the view that **the mere expiry of the procedural time limit – in the absence of acts interrupting or suspending the procedure – results in the formation of tacit consent** even where the building works do not comply with planning regulations.

These rulings, however, concern cases involving mere planning non-conformities and do not address the more fundamental issue of structural or legal inadmissibility, as outlined in point (1) above.

A fourth line of interpretation (*Consiglio di Stato*, Section IV, No. 3317 of 1 June 2018) – albeit a minority view and even more restrictive than the approaches outlined above – holds that **tacit consent cannot take effect where the building works conflict with planning instruments.**

Concluding Remarks

The case law examined paints the picture of an administrative simplification mechanism that remains subject to stringent application limitations, in an effort to strike a balance between the need for certainty in legal relationships and the protection of the public interest.

For operators and investors, it therefore remains crucial to manage the preparatory phase of the procedure with particular care and to carry out a prior check on the completeness of the documentation, the correct classification of the works, and the compliance of the project with applicable planning and building regulations, in order to reduce the risk of uncertainty in the application of the tacit consent mechanism and prevent subsequent disputes.

ROAD SETBACKS: THE IMPLEMENTING PLANNING INSTRUMENT PREVAILS OVER THE PRG *edited by Filippo Grigolon*

Where road-setback requirements are regulated in implementing planning instruments, the provisions contained in the implementing instrument prevail over those set out in the technical implementation rules of the Master Plan (Piano Regolatore Generale, PRG).

On this point, the Regional Administrative Court of Palermo (TAR Palermo, judgment No. 636/2026) upheld the appeal brought by the owner of a plot included within a subdivision plan (piano di *lottizzazione*) that established a shorter distance between the building and the road than the one provided by the municipal PRG.

The Case in Brief

The claimant, owner of a parcel of land included in a subdivision plan already approved by the Municipal Council, entered into the relevant urban planning agreement with the Municipality. She then submitted an application for a building permit to construct a small single-family dwelling in accordance with the subdivision plan, and obtained the permit.

The Municipality, however, ordered the suspension of works and annulled the building permit *ex officio*, arguing that the distances from the road edge shown in the project drawings were shorter than those required by the PRG.

Can the Implementing Plan Derogate from the PRG on Road Setbacks?

The TAR held that the building permit issued to the claimant was lawful, following a three-step line of reasoning:

a. The road in question was a local road, outside the built-up area, for which the Italian Highway Code does not prescribe minimum distances from the road boundary for traffic-safety purposes;
b. Planning instruments may establish minimum road setbacks for local roads. In this case, the municipal building regulation expressly referred the regulation of such distances to the PRG or to implementing instruments such as the subdivision plan;
c. The subdivision plan, approved by a resolution of the Municipal Council, constitutes an implementing instrument capable of derogating from the provisions of the PRG, including the ten-metre minimum setback established therein. Consequently, the shorter setback provided for in the subdivision plan and in the related urban planning agreement is lawful.

The Court also added an important procedural clarification: **if the Municipality intended to challenge the shorter setback provided for in the implementing plan, it would first have had to invalidate the subdivision plan itself, potentially by exercising its right to withdraw from the agreements replacing administrative measures (*accordi sostitutivi di provvedimento*) under Article 11, paragraph 4, of Law No 241/1990.**

What This Means for Operators

This ruling represents an important development for operators, as it reinforces the value of urban planning agreements as safeguards for stability and certainty, while also underscoring the decisive role of the negotiation and drafting phase of the planning agreement.

In short, **once the subdivision plan has been approved and the planning agreement executed, the provisions they contain regarding road setbacks bind the administration and prevail over the PRG**. The Municipality cannot "reopen" or revisit those provisions during the building-works review stage without first revising or invalidating the implementing plan through the procedures provided by law.

LIMITS OF CONTINGENT AND URGENT BUILDING ORDERS *edited by Michele Balducci*

The Brescia Regional Administrative Court (TAR Brescia), in its interim order No. 115/2026, clarifies the limits of the measures that a municipality may require through contingent and urgent orders (ordinanze contingibili e urgenti) in the construction sector.

The claimant, owner of a property on which restoration and conservation works had been initiated (and subsequently suspended) due to alleged non-compliance with the relevant building permit, challenged a municipal contingent and urgent order requiring her to carry out:

i. **temporary** safety measures – such as closing the street to vehicular traffic – to prevent risks arising from the construction works; and
ii. **permanent** structural works, intended to eliminate the danger to public safety on a permanent basis.

The claimant sought suspension and annulment of the order.

The TAR partially upheld the request for interim relief, but only with respect to the permanent works. Specifically, the TAR held that "***structural works intended to eliminate the danger on a permanent basis (...) appear to fall outside the scope of Article 54, para. 4, of Legislative Decree No. 267/2000, which justifies the exercise of extra-ordinary powers only in the presence of a situation of contingency and urgency that cannot otherwise be addressed through the ordinary means provided by law, and on condition that their effects are temporary***".

Conversely, the Court did not uphold the request for interim relief concerning the temporary safety obligations – *i.e.*, provisional safety measures along the street below – and therefore considered the contingent and urgent order legitimate insofar as it required those temporary measures.

Being a ruling issued on an application for interim relief, it is subject to all the inherent limits of a precautionary measure; its conclusions will therefore need to be confirmed (or not) at the merits stage. Nevertheless, it is noteworthy, as case law on the limits of contingent and urgent orders in the construction sector remains relatively rare.

CULTURAL PRE-EMPTION, OMITTED NOTIFICATION, AND CILA *edited by Carlotta Degli Effetti*

Submitting a CILA (Certified Notice of Commencement of Minor Works) to the Superintendency (Sovrintendenza), accompanied by the deed of sale for a listed property – where the purchase had not been notified as required (denuntiatio) – does not cure the omission.

With judgment No. 2888 of 2026, the *Consiglio di Stato* revisits the rules governing the right of pre-emption for cultural heritage, clarifying the consequences of failing to submit, or irregularly submitting, the notification required under Article 59 of the Code of Cultural Heritage and Landscape (Legislative Decree No. 42/2004).

Articles 59 *et seq*. of the Code require that any transfer deed concerning protected cultural assets (in this case, real property) be notified to the Ministry of Culture within thirty days of execution. The notification must include mandatory information – identification details of the parties and the assets, the location of the assets, the nature and conditions of the transfer, and the parties' addresses (*domicilio*) in Italy. A notification lacking this information, or containing incomplete information, is deemed not to have been made. Only upon receipt of a complete notification does the sixty-day period begin within which the Ministry of Culture, the Region, or other relevant territorial public bodies may exercise their right of pre-emption.

In the case under consideration, the deed of sale for the listed property had not been notified.

After the purchase, and for the purposes of building works, the owner submitted a CILA, which was subsequently forwarded – together with the deed of sale - to the relevant Superintendency (which had, therefore, in effect, been notified of the transfer).

Following this notification, the Municipality concerned exercised its right of pre-emption.

The owner objected to the exercise of the right, arguing that the sixty-day period for exercising pre-emption had already expired, having commenced when the CILA was submitted.

The *Consiglio di Stato*, however, categorically rejected this equivalence: a deed filed solely for building purposes, and functionally unrelated to the rationale of the required notification (*denuntiatio*), cannot substitute for it, regardless of the documents attached.

Accordingly, **where the notification (i) has been omitted, (ii) submitted late, or (iii) is incomplete, Article 62, paragraph 4, of the Code of Cultural**

Heritage and Landscape applies. Under this provision, the time limit for submitting a pre-emption proposal increases from twenty to ninety days, while the time limit for adopting and notifying the pre-emption order increases from sixty to one hundred and eighty days, running from the moment the Ministry of Culture has received all the elements required for a complete notification.

The omission therefore confers no advantage on the purchaser. On the contrary, it significantly prolongs the period of uncertainty surrounding the stability of the purchase.

SELF-REVOCATION OF A SCIA AFTER THIRTY DAYS: THE CONSIGLIO DI STATO CLARIFIES THE LIMITS *edited by Giulia Massimo*

The Administration's power to inhibit a SCIA must be exercised within thirty days of its submission. Once this period has elapsed, the Administration may intervene only through self-revocation (autotutela), providing concrete grounds for the existence of a current public interest that prevails over the legitimate expectation accrued by the private party.

However, **the expiry of the 30-day period does not preclude the exercise of supervisory and control powers in building matters where the SCIA is used outside its intended scope**.

This is, in essence, the principle affirmed by the *Consiglio di Stato* in judgment No. 2384/2026.

The case arose from the submission of a SCIA concerning "*minor internal alterations and changes to façade colours*", filed as an amendment to a previous CILA (Certified Notice of Commencement of Minor Works) concerning extraordinary maintenance works.
Approximately three months after the SCIA was filed – and with the works almost completed – the Municipality annulled it, taking the view that the SCIA had also altered the use of the property and that the hospitality business operated therein was incompatible with the urban planning rules set out in the master plan (*piano regolatore*).

Both the court of first instance and the *Consiglio di Stato* upheld the property owner's appeal, finding that the Administration – having forfeited its power of inhibition under Article 19 of Law No. 241/1990 – had exercised self-revocation (*autotutela*) without providing specific grounds demonstrating that the conditions required by Article *21-nonies* of the same law had been met and, in particular, without evaluating and balancing the public interest pursued against the legitimate expectation accrued by the private party upon completion of the works.

The appellate judgment, however, highlights an additional principle of great practical significance, drawing a clear distinction between the stability of the SCIA and the Administration's building-law enforcement powers, which remain fully in force:

i. For a SCIA to produce its typical effects provided for by law, the activity actually carried out must fall within the scope of application of the instrument used. Otherwise, the ordinary regime for the consolida-

tion of effects after the expiry of the statutory time limit does not apply;

ii. A SCIA used outside its scope does not produce the effects provided for by the legislation. As a result, the building works will be deemed to have been carried out without or in breach of the required title, without prejudice to the Administration's powers of supervision, prevention and enforcement against building violations under Article 27 of Presidential Decree No. 380/2001 (and therefore not the self-revocation regime, with the relevant reasoning requirements).

Any different approach would result in creating an implicit administrative measure detached from the principle of legality.

A SMALLER VOLUME THAN THAT AUTHORISED IN THE PERMIT DOES NOT, IN ITSELF, CONSTITUTE A BUILDING VIOLATION *edited by Matteo Bianchi*

In judgment No. 696/2026, the Regional Administrative Court of Salerno reaffirmed the principle that, where a building project has been duly authorised, ***the construction of a smaller volume than that authorised in the relevant building permit does not, in itself, constitute a building violation.***

The ruling arose from an appeal against a building permit for a renovation project issued to the owner of the property adjoining that of the claimant.

Among the various grounds for appeal, the claimant argued that the contested works (i) concerned an unauthorised building (since, at the time of construction, only two of the three authorised storeys had been built) and (ii) concerned a plot that had already reached its maximum permitted volume and had no residual building capacity.

By contrast, the respondent Municipality emphasised that, pursuant to Article 32 of Presidential Decree No. 380/2001, the construction of a smaller volume than that authorised does not amount to a building violation and that, consequently, the plot retained a residual building capacity of 680.44 cubic metres (given a built volume of 1,115.20 cubic metres compared to an original building capacity of 1,795.64 cubic metres).

The TAR upheld the Municipality's position and dismissed the grounds for appeal, stating that "*Pursuant to Article 32 of the Consolidated Building Act, any modification incompatible with the overall design underlying the original building project, whether from a qualitative or quantitative perspective, constitutes a substantial variation; specifically, where there is a change of use entailing a variation in* ***standards, or a substantial increase in volume or floor area****, or substantial variations to the urban-planning and building parameters of the approved project or to the location of the building, or a change in the characteristics of the authorised building works, or a non-procedural breach of building regulations [...].* ***It follows, conversely, that whenever the variation concerns a reduction in volume, as in the present case, no substantial non-conformity arises such as to justify stringent administrative measures***".

Finally, it should be noted that an appeal against the judgment has been lodged before the *Consiglio di Stato*; all updates will be provided in forthcoming issues of *RE-xtra News*.

Environmental Focus edited by Francesca Carlesi and Martina Carrozzini

PERMANENT SAFETY MEASURES (MISP): CLARIFICATION FROM THE MINISTRY FOR THE ENVIRONMENT

*Permanent safety measures (messa in sicurezza permanente, "**MISP**") may concern not only waste but also polluting sources that do not qualify as waste, such as contaminated soil or anthropogenic fill materials (matrici materiali di riporto), since MISP consists of "the set of measures designed to definitively isolate polluting sources from the surrounding environmental matrices and ensure a high and permanent level of safety for people and the environment."*

This was clarified by the Ministry for the Environment and Energy Security in a note dated 11 March 2026, issued in response to an environmental query (interpello ambientale) under Article 3-septies of Legislative Decree No. 152/2006 (the "Environmental Code"). The query sought clarification as to whether, when approving a MISP project involving the in-situ retention of waste, compliance is required with the conditions set out in the legislation on landfills (Legislative Decree No. 36/2003) or solely with the rules governing remediation (i.e., Part Four, Title V, of the Environmental Code).

Referring to the rulings of the Constitutional Court (Judgment No. 50/2023) and the *Consiglio di Stato* (Judgment No. 2725/2024), the Ministry clarified that MISP interventions **may concern not only waste but also polluting sources that do not qualify as waste, such as contaminated soil or anthropogenic fill materials. The decisive criterion for identifying the applicable regulatory regime is whether the waste is moved**. More specifically:

- where *in-situ* safety measures are carried out **without removing or moving waste**, they remain entirely subject to the **remediation regulations**. The project must therefore be authorised by the relevant Authority within the ordinary remediation procedure, pursuant to Article 242, paragraph 7, and, for Sites of National Interest, pursuant to Article 252, paragraph 4, of the Environmental Code;

- where MISP (i) is carried out by removing, **moving and transferring**

waste to an area other than the original one – even if located within the same site undergoing remediation – or within the same area subsequently designated for waste disposal, or (ii) involves the transfer of additional waste present on the site and destined for disposal, the rules governing landfills apply. In any case, since the facility is designed to support the execution of the remediation, the relevant project must be authorised pursuant to Article 242, paragraph 7, of the Environmental Code – as such authorisation replaces all other required acts of consent; for Sites of National Interest, the authorisation encompasses such acts of consent pursuant to Article 252, paragraph 4, of the Environmental Code.

Environmental Focus edited by Francesca Carlesi and Martina Carrozzini

EXECUTIVE DESIGN OF A PUBLIC-WORKS PROJECT ON A SITE SUBJECT TO SITE-SPECIFIC RISK ASSESSMENT: THE RULING OF THE LOMBARDY REGIONAL ADMINISTRATIVE COURT

The Lombardy Regional Administrative Court (TAR Lombardia), in a recent judgment (No. 1146/2026), ruled on the relationship between the approval of the executive design of a public-works project and the remediation procedure for the site on which the work is to be carried out, which had undergone – with positive outcome – a site-specific risk assessment. The Court clarified that the executive design cannot be approved until monitoring confirms the stability of the low level of risk present in the area or, at the very least, until the monitoring programme has been approved.

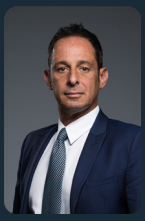
According to the Court:

a. the rationale of Article 242, paragraph 5, of the Environmental Code – which, in the event of a positive site-specific risk assessment, allows the inter-agency conference (conferenza di servizi) to require a monitoring programme to be carried out – lies in the need to monitor environmental risk over time, given that the positive outcome of a risk assessment carried out at a given moment may be altered by future, even unforeseeable, events;
b. the monitoring obligation is not a mere formal requirement, but a substantive obligation;
c. accordingly, **where the risk assessment procedure requires the site to be subject to a monitoring plan, the implementation of the plan – or at least its approval – constitutes a logical and legal prerequisite for the approval of the executive design of the project.**

CONTACTS

The professionals at Legance are available for any further clarification or request that you may require, also in relation to specific cases.

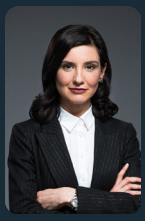
For further information:



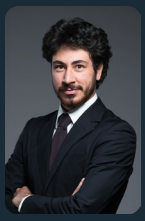
Giuseppe Abbruzzese
Partner
gabbruzzese@legance.it

Francesca Carlesi
Partner
fcarlesi@legance.it

Francesco Castoldi
Senior Counsel
fcastoldi@legance.it

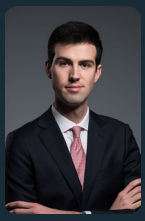


Roberta Patrizia Giannotte
Senior Associate
rgiannotte@legance.it



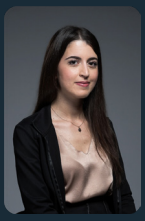
Vincenzo Acampora
Associate
vacampora@legance.it

Michele Balducci
Associate
mbalducci@legance.it

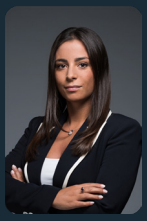


Matteo Bianchi
Associate
mbianchi@legance.it

Valentina Brovedani
Associate
vbrovedani@legance.it



Martina Carrozzini
Associate
mcarrozzini@legance.it



Carlotta Degli Effetti
Associate
cdeglieffetti@legance.it

Filippo Grigolon
Associate
fgrigolon@legance.it

Giulia Massimo
Associate
gmassimo@legance.it

Ristela Prendi
Associate
rprendi@legance.it

Flavia Maria Veroux
Associate
fmveroux@legance.it

Legance

RE-xtra News
is a project by Legance

Contacts
osservatoriorealestate@legance.it

Edited by
Legance

Graphic Design
vitamineD